

TOWN OF CUTLER BAY

Mayor Paul S. Vrooman
Vice-Mayor Edward P. MacDougall
Councilmember Timothy J. Meerbott
Councilmember Ernest N. Sochin
Councilmember Peggy R. Bell

Town Attorney Mitchell Bierman
Town Attorney Chad Friedman
Town Clerk Erika Gonzalez-Santamaria
Town Manager Steve Alexander

This meeting is open to the public. In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Town Clerk at (305) 234-4262 for assistance no later than four (4) days prior to the meeting.

LOCAL PLANNING AGENCY AGENDA

Wednesday, November 19, 2008, 7:00 PM
South Dade Regional Library
10750 SW 211th ST, 2nd Floor
Cutler Bay, Florida 33189

I. CALL TO ORDER, ROLL CALL

II. ADDITIONS, DELETIONS, AND DEFERRALS

III. CONSENT AGENDA

A. Minutes – October 15, 2008

IV. ACTION ITEMS:

A. AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33 "ZONING" ARTICLE VI "SIGNS" SECTION 33-96.5 RELATING TO THE MAXIMUM HEIGHT FOR FLAG POLES IN RESIDENTIAL ZONING DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.

B. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, UPDATING REGULATIONS RELATED TO TEMPORARY STORAGE UNITS AND FREIGHT CARGO CONTAINERS; CREATING PERMIT REQUIREMENTS; CREATING ANNUAL REGISTRATION FEE; CLARIFYING FEE REQUIREMENT RETROACTIVE TO PASSAGE OF INITIAL ORDINANCE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE AND PROVIDING FOR AN EFFECTIVE DATE.

C. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING THE ART IN PUBLIC

PLACES PROGRAM; PROVIDING CRITERIA FOR THE SELECTION OF WORKS OF ART; DELINEATING THE APPLICABILITY OF THE ORDINANCE TO COMMERCIAL DEVELOPMENT PROJECTS; DESCRIBING THE EFFECT UPON PERMIT PROCESS AND THE CERTIFICATE OF OCCUPANCY PROCESS; CREATING AN ART IN PUBLIC PLACES TRUST FUND AND CREATING GUIDELINES FOR CONTRIBUTION; PROVIDING FOR A PROCESS FOR APPROVAL OF DONATED ARTWORK AND PROCEDURES FOR OWNERSHIP AND MAINTENANCE; PROVIDING FOR RETURN OF UNUSED FEES; CREATING APPLICATION PROCEDURES REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING AN EFFECTIVE DATE.

VI. ADJOURNMENT.

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

**TOWN OF CUTLER BAY
LOCAL PLANNING AGENCY MEETING
MINUTES**

Wednesday, October 15, 2008, 7:00 PM
South Dade Regional Library
10750 Southwest 211th Street, 1st Floor
Cutler Bay, Florida 33189

I. CALL TO ORDER/ROLL CALL OF MEMBERS: The meeting was called to order by the mayor at 7:15 p.m. Present were the following chartered officials:

Councilmember Peggy R. Bell
Councilmember Timothy J. Meerbott
Councilmember Ernest N. Sochin
Vice Mayor Edward P. MacDougall
Mayor Paul S. Vrooman

Town Attorney Mitchell Bierman
Town Attorney Chad Friedman
Town Clerk Erika Gonzalez-Santamaria
Town Manager Steven Alexander

II. PLEDGE OF ALLEGIANCE: There was no Pledge of Allegiance at this time.

III. ADDITIONS, DELETIONS, AND DEFERRALS: None at this time.

IV. CONSENT AGENDA:

Councilmember Meerbott made a motion approving the minutes of meeting of September 17, 2008. The motion was seconded by Councilmember Bell and adopted by a unanimous voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

V. ACTION ITEMS:

The clerk read the following ordinance by title:

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, GRANTING THE REQUEST OF CITY FURNITURE FOR A REZONING FROM IU-1 (INDUSTRIAL, LIGHT MANUFACTURING DISTRICT) TO BU-1A (LIMITED BUSINESS DISTRICT) FOR PROPERTY LOCATED AT 18750 S. DIXIE HIGHWAY, AS LEGALLY DESCRIBED IN EXHIBIT "A," CONSISTING OF APPROXIMATELY 56,413 SQ. FT.; AND PROVIDING FOR AN EFFECTIVE DATE.

Interim Planning Director, Kathryn Lyon provided a brief discussion and recommended approval of the ordinance.

There was no public hearing at this time.

Vice Mayor MacDougall made a motion to adopt staff's recommendation to approve. The motion was seconded by Councilmember Meerbott and approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

VI. ADJOURNMENT: The meeting was officially adjourned at 7:20 p.m.

Respectfully submitted:

*Erika Gonzalez-Santamaria, CMC
Town Clerk*

*Adopted by the Town Local Planning Agency
on this 19th day of November, 2008.*

Paul S. Vrooman, Mayor

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

ORDINANCE NO. 08-_____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33 "ZONING" ARTICLE VI "SIGNS" SECTION 33-96.5 RELATING TO THE MAXIMUM HEIGHT FOR FLAG POLES IN RESIDENTIAL ZONING DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on August 20, 2008, the Town Council adopted Ordinance 08-19 providing for certain regulations of signs within the Town; and

WHEREAS, such sign regulations include flag displays as well as a maximum height requirement for flag poles in residential zoning districts; and

WHEREAS, it is the desire of the Town Council to amend the height limit for flag poles in residential zoning districts, to allow for a maximum flag pole height of 35 feet within the Town's residential zoning districts; and

WHEREAS, the Town Council recognizes that Section 33-60 of the Miami-Dade County Code of Ordinances, which applies within the incorporated and unincorporated areas of the county, provides that flag poles exceeding 20 feet in height shall comply with construction and building permit requirements; and

WHEREAS, the Town Council finds and determines that this Ordinance is consistent with all applicable policies of the Miami-Dade County Comprehensive Plan; and

WHEREAS, the Town Council, sitting as the Local Planning Agency, has reviewed this Ordinance at a duly noticed meeting on November 19, 2008, and recommended its adoption; and

WHEREAS, the Town Council hereby finds and declares that adoption of this Ordinance is necessary, appropriate, and advances the public interest.

NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS¹:

Section 1. Recitals Adopted. That the recitals set forth above are true and correct and incorporated herein by this reference.

¹ Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text, **shaded** text reflects changes made from First Reading.

Section 2. Amendment to Chapter 33 of the Town Code. The Town Council hereby amends Chapter 33 “Zoning,” Article VI “Signs” as follows:

* * *

Sec. 33-96.5. Flag display standards.

(a) *Maximum height.* Except as otherwise provided herein, flags shall be displayed on flag poles. Such poles in nonresidential zoning districts shall not exceed the allowed structure height of the zoning district or 60 feet, whichever is less. Flagpoles may not be placed on top of buildings or light poles. Flagpoles in residential zoning districts shall not exceed ~~20~~ 35 feet. Flag poles shall be constructed in accordance with the construction and permitting requirements of Section 33-60 of the Miami-Dade County Code of Ordinances, as applicable.

(b) *Maximum number and size.*

(1) The maximum dimensions of any flag shall be proportional to the flag pole height. The hoist side of the flag shall not exceed 20% of the vertical height of the pole. In addition, flags are subject to the following dimensional limitations:

Pole	Height	Maximum	Flag	Size
Up	to 25 feet	24	total square	feet
25	to 39 feet	40	total square	feet
40	to 49 feet	60	total square	feet
50	to 60 feet	150	total square	feet

(2) Each property shall be allowed a maximum of three (3) flag poles. A maximum of two flags shall be allowed per flag pole. References to flagpole height in this division refer to vertical flagpoles. References to the number of flags and flag poles and flag dimensions refer to both vertical flagpoles and mast-arm flagpoles (for example, staffs extending at an angle from a building). On United States and Florida holidays, there shall be no maximum flag size or number or other limitations on manner of display.

(c) *Flags on permanent fixtures other than poles.* Flags that are attached to the side of a structure without a pole shall not, individually or cumulatively, cover more than the greater of 24 square feet or 10% of the facade of the structure on which the flag is mounted. One flag is permitted on up to two building facades.

(d) *Setback.* A vertical flag pole must be set back at least 5 feet from all property boundaries.

(e) *Condition of flag and pole or other permanent mounting.* The flag and flag pole or other permanent mounting shall be maintained in good repair. Flag poles with broken halyards shall not be used, and torn or frayed flags shall not be displayed.

(f) *Use of flags as attention-attractors prohibited.* The placement of flags upon merchandise or structures to draw the public's attention to such items shall be considered to render such flags prohibited "attention attractors" pursuant to Section 33-95(f) of the Code.

* * *

Section 3. Conflicts. All ordinances or Code provisions in conflict herewith are hereby repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in the Code. It is the intention of the Town Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this ____ day of _____, 2008.

PASSED and ADOPTED on second reading this _____ day of _____, 2008.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

ORDINANCE NO. 08-_____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, UPDATING REGULATIONS RELATED TO TEMPORARY STORAGE UNITS AND FREIGHT CARGO CONTAINERS; CREATING PERMIT REQUIREMENTS; CREATING ANNUAL REGISTRATION FEE; CLARIFYING FEE REQUIREMENT RETROACTIVE TO PASSAGE OF INITIAL ORDINANCE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the "Town") finds and determines that regulations are necessary in relation to temporary on-site storage units (the "Storage Units") and freight cargo containers (the "Freight Containers"); and

WHEREAS, the usage and nature of these Storage Units and Freight Containers and their oversight requires that a permit be issued, and a system of permitting be implemented, in order to ensure that they are being utilized in compliance with the Town Code of Ordinances (the "Town Code"); and

WHEREAS, the Town also wishes to clarify that the users of these Storage Units and Freight Containers must pay a fee for the usage of the units as already stipulated by the Planning and Zoning Fee Schedule of the Town and Town Ordinance 06-23 in order to help defray the administrative costs relating to the oversight of these units; and

WHEREAS, the Town desires that any portable storage company providing Storage Units, as well as any company that provides Freight Containers, doing business in the Town obtain an annual permit, outlining the obligations and requirements for conducting business in the Town, in order to ensure that the company will comply with those obligations and requirements, and in order to allow the Town to monitor that compliance; and

WHEREAS, the Town finds that this ordinance will promote the health, safety and welfare of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS¹:

Section 1. Recitals. The above Recitals are true and correct and are incorporated herein by this reference.

¹ Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text, **shaded** text reflects changes made from First Reading.

Section 2. Amendment to Ordinance 06-23 of the Town Code. The Town Council of the Town of Cutler Bay hereby amends Ordinance 06-23 of the Town Code of Ordinances as follows:

(1) **Recitals.**

The above Recitals are true and correct and are incorporated herein by this reference.

(2) **Purpose and Intent.**

This Ordinance regulates the placement of Temporary Storage Units and Freight Cargo Containers in order to promote the health, safety, and welfare of the residents of the Town and to preserve the aesthetic value of its neighborhoods.

(3) **Definitions.**

The following definitions shall apply under this Ordinance:

A. User shall mean the person that owns, rents, occupies, or controls the property.

B. Supplier shall mean the company or vendor which supplies the Temporary Storage Unit to the property.

C. Temporary Storage Unit shall mean a transportable unit designed and used primarily for temporary storage of building materials (before they are utilized for building purposes), household goods, and other such materials for use on a limited basis on a property. Such unit shall not be considered an accessory structure as provided in the Code of the Town of Cutler Bay.

D. Freight Cargo Container shall mean a reusable enclosed or semi-enclosed vessel, cargo container or truck trailer:

(i) Originally, specifically or formerly designed or used for the packing, shipping, movement or transportation of freight, articles, goods, belongings or commodities; or

(ii) Designed for or capable of being mounted or moved on a rail car, truck or vessel; or

(iii) Designed for or capable of being mounted on a chassis or bogie for movement by truck tractor or other similar device.

Such cargo container shall not be considered an accessory structure as provided in the Town Code. The Freight Cargo Container may be similar or identical to a Temporary Storage Unit in its appearance and/or function, the principal difference being its use for transient purposes rather than stationary storage.

(4) **Requirements for Placement of Temporary Storage Units and Freight Cargo Containers.**

The following requirements shall apply to the placement of Temporary Storage Units and Freight Cargo Containers in the residential zones:

A. It shall be unlawful for any person or entity to place or permit the placement of Temporary Storage Units and Freight Cargo Containers on property located within a Residential Zoning District unless the placement complies with this section of the Town Code.

B. Temporary Storage Units and Freight Cargo Containers shall only be placed on the User's driveway or a parking area or, if access exists at the side or rear of the site, the side or rear yard. The required parking space(s) shall at all times be maintained if temporary storage units are placed in parking areas. No more than one storage unit may be placed on a property at any time.

C. The Temporary Storage Unit or Freight Cargo Container shall be located at such property for a maximum of fourteen (14) consecutive days, including the days of delivery and removal. An extension may be granted to the User by the Town Manager, or designee, subject to conditions, for a reasonable additional time period in an amount not to exceed twenty eight (28) days.

D. A Temporary Storage Unit or Freight Cargo Container may not be located at a residential property for more than four months of any calendar year.

E. The User, as well as the Supplier, shall each be independently responsible for ensuring that the Temporary Storage Unit or Freight Cargo Container is maintained in good condition, free from evidence of deterioration, weathering, discoloration, graffiti, rust, ripping, tearing or other holes or breaks, at all times.

F. No Temporary Storage Unit or Freight Cargo Container shall be used to store solid waste, construction debris, demolition debris or any illegal or hazardous material. Upon reasonable notice to the User, the Town of Cutler Bay may inspect the contents of any Temporary Storage Unit or Freight Cargo Container at any reasonable time to ensure that it is not being used to store said materials.

G. No ~~storage unit~~ Temporary Storage Unit or Freight Cargo Container may be used to house humans or animals of any kind.

H. The date that the ~~container~~ Temporary Storage Unit or Freight Cargo Container was dropped off must be clearly posted, in a weather resistant manner, on the ~~container~~ Temporary Storage Unit or Freight Cargo Container.

(5) **Permits Required.**

A. Prior to commencing business in the Town the portable storage company must obtain an annual permit for providing Temporary Storage Units outlining the obligations and requirements for conducting business in the Town. The fee for such permit shall be

\$250.00. The annual permit fee for portable storage companies is payable on or before January 1 of each year, commencing January 1, 2009.

B. Prior to commencing business in the Town the company providing freight containers must obtain an annual permit for providing Freight Cargo Containers, outlining the obligations and requirements for conducting business in the Town. The fee for such permit shall be \$500.00. The annual permit fee for companies providing freight cargo containers is payable on or before January 1 of each year, commencing January 1, 2009.

C. Prior to placing a Temporary Storage Unit or Freight Cargo Container on site, the user or the supplier of the Temporary Storage Unit or Freight Cargo Container must apply for a site permit. Application for the site permit shall be made to the Town on a form provided by the Town. The application shall include the signature of the site property owner in order to ensure that the site owner has full knowledge of, and consents to the placement of the portable storage unit on site and the provisions of this section.

D. Pursuant to Town Ordinance 06-23 and Section U of the Town Planning and Zoning Fee Schedule, a fee shall accompany the completed application for a Temporary Storage Unit or Freight Cargo Container, in the sum of \$85.00, payable by the user. The effective date of this fee is September 19, 2006.

E. Portable storage unit permits will not be granted to any portable storage unit company, or customer of any portable storage unit company, which is found to be in violation of the regulations of this section, until such violation is brought into compliance.

(5)(6) Placement of Temporary Storage Units in other Zoning Districts.

A ~~storage unit~~ Temporary Storage Unit or Freight Cargo Container placed in a zoning district other than residential shall comply with the subsections (4)C, (4)D, (4)E, (4)F, (4)G and (4)H above of this Ordinance.

Section 3. Conflicts. All ordinances or Code provisions in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. Severability. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in the Code. It is the intention of the Town Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. **Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading, and shall be applied retroactively to the extent indicated in paragraph (5) (B) above.

PASSED on first reading this ____, day of ____, 2008.

PASSED and ADOPTED on second reading this ____ day of ____, 2008.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman	_____
Vice Mayor Edward P. MacDougall	_____
Councilmember Peggy R. Bell	_____
Councilmember Timothy J. Meerbott	_____
Councilmember Ernest N. Sochin	_____

ORDINANCE NO. 08-_____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING THE ART IN PUBLIC PLACES PROGRAM; PROVIDING CRITERIA FOR THE SELECTION OF WORKS OF ART; DELINEATING THE APPLICABILITY OF THE ORDINANCE TO COMMERCIAL DEVELOPMENT PROJECTS; DESCRIBING THE EFFECT UPON PERMIT PROCESS AND THE CERTIFICATE OF OCCUPANCY PROCESS; CREATING AN ART IN PUBLIC PLACES TRUST FUND AND CREATING GUIDELINES FOR CONTRIBUTION; PROVIDING FOR A PROCESS FOR APPROVAL OF DONATED ARTWORK AND PROCEDURES FOR OWNERSHIP AND MAINTENANCE; PROVIDING FOR RETURN OF UNUSED FEES; CREATING APPLICATION PROCEDURES REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Mayor and Town Council of the Town of Cutler Bay (the “Town”) desire to create an Art in Public Places program to enhance the beauty of the Town and to generate support for community recognition; and

WHEREAS, Town of Cutler Bay Art in Public Places Program is designed to promote the general welfare by encouraging pride in the community, increasing property values, enhancing the quality of life through artistic opportunities, uniting the community through shared cultural experiences, and creating a cultural legacy for future generations through the collection and exhibition of high-quality art pieces that reflect diverse styles, chronicling history through the collection of artifacts, documents and memorabilia that will acknowledge the past and create programs and activities that will further these goals; and

WHEREAS, the Mayor and Town Council desire to create the Art in Public Places program; and

WHEREAS, the Town finds that this ordinance will promote the health, safety and welfare of the Town.

NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That the recitals set forth above are true and correct and incorporated herein by this reference.

Section 2. Art in Public Places The Code the Town of Cutler Bay, is hereby amended to adopt the Art in Public Places program, as follows:

Section 1. Intent and purpose.

The purpose of the Town of Cutler Bay Art in Public Places Program is to promote the general welfare by encouraging pride in the community, increasing property values, enhancing the quality of life through artistic opportunities, uniting the community through shared cultural experiences, and creating a cultural legacy for future generations through the collection and exhibition of high-quality art pieces that reflect diverse styles, chronicling history through the collection of artifacts, documents and memorabilia that will acknowledge the past and create programs and activities that will further these goals.

Section 2. Definitions.

(a) “Art work” means durable creations that may be original or limited editions of art and that may include, but not be limited to, sculptures, murals, monuments, frescoes, fountains, paintings, stained glass, or ceramics, and may include architectural designs, components or structures as provided by section 14 of this ordinance. The “art work” medium may include, but not be limited to: glass, steel, bronze, wood, stone and concrete. For purposes of the art in public places program, “art work” does not include the following:

- (1) Directional elements, such as signage or graphics;
- (2) Objects that are mass produced in a standard design;
- (3) Landscape gardening, unless substantially comprising durable elements defined as “art work” under this section.

(b) “Development project” means any development, including remodeling, which requires a building permit or permits as described on the precise plan submitted for approval to the Town.

(c) “Project developer” means the owner, including its successor and assigns, of the subject property.

(d) “Project valuation” means the total value of the improvements approved for a development project, as indicated on the building permit application or applications submitted to the Town in order to obtain a building permit or permits for the development project.

(e) “Public place” means any exterior area on public or private property within the Town of Cutler Bay which is easily accessible or clearly visible to the general public from adjacent public property such as a street or other public thoroughfare or sidewalk.

(f) “Durable” means lasting, enduring and highly resistant to deterioration due to weather or the passage of time.

Section 3. Administration of the Town of Cutler Bay art in public places program.

The Town of Cutler Bay art in public places program shall be administered by the Department of Planning and Zoning of the Town of Cutler Bay. To assist in administering the art in public places program, the Town Council may appoint an advisory board (the “Board”).

Section 4. Selections of works of art.

All acquisitions will be in accordance with the criteria identified in this ordinance. The Town Council may approve each acquisition from those selections recommended by the Board. The Town Manager and Town Attorney will negotiate and execute appropriate contracts to acquire each approved work of art. Funds may be aggregated to acquire works of art.

(a) Selection Process. The Town Council shall establish procedures for selecting art work to be purchased from the resources of the art in public places fund. Those procedures may include the following means:

- (1) Open competition;
- (2) Limited competition;
- (3) Invitation;
- (4) Direct purchase;
- (5) Donation;
- (6) Any combination of the above.

All Board members, Town Council members, artists, applicants, and respective agents shall comply with the Town’s code of silence regulations.

(b) Selection criteria. In the selection process, the following principles shall be observed:

- (1) Works of art shall be located in areas where residents and visitors live and congregate and shall be highly accessible and visible (Maximum visual accessibility to pedestrian or vehicular traffic).

(2) Areas used by tourists, including parks and thoroughfares, at public or governmental facilities, shall each have a separate master plan which shall be incorporated as a portion of the master art plan.

(3) Board members should consider the inherently intrusive nature of public art on the lives of those frequenting public places. Artworks reflecting enduring artistic concepts, not transitory ones, should be sought.

(4) The Board's selections must reflect the cultural and ethnic diversity of the Town and South Florida without deviation from a standard of excellence.

(5) Final selection shall also take into account appropriateness to the site, permanence of the work in light of environmental conditions at the site, maintenance requirements, quality of the work, likelihood that the artist can successfully complete the work within the available funding, diversity of works already acquired by the Town, diversity of the artists whose work has been acquired by the Town.

(6) Quality of the artwork;

(7) Maintenance requirements;

(8) Whether the artwork too closely resembles a business logo or sign and should, therefore, be rejected; and

(9) Any other criteria set forth in the public art program guidelines, as amended from time to time.

(10) Ability of the artist to complete the project within a specified schedule and budget;

(11) Exhibition and sales history of the artist, as well as works of art in public collections and previous public art purchases or commissions; and

(12) Any other criteria set forth in the public art program guidelines, as amended from time to time.

Section 5. Applicability.

(a) All commercial development projects (including interior or exterior modifications, additions, or new construction) including parking structures and/or commercial sites with a project valuation(s) as provided for under the development order or building permit(s) exceeding \$250,000 shall be subject to the provisions of this ordinance. Individual tenant improvements in any commercial or mixed-use development exceeding \$250,000, but not individual residential tenant improvements, shall comply with this provision.

(b) As determined by the Town Council, after public hearing, the development, remodeling or reconstruction of structures may be exempt from the fee for the art in public places program if:

(1) The structure is intended primarily to house one or more social service agency providers, affordable housing projects, or religious facilities; or,

(2) The project consists of the reconstruction of structures which have been damaged by fire, flood, wind, or other calamity.

(c) This ordinance does not apply to residential projects of any size.

Section 6. Building permits.

(a) Prior to issuance of a final building permit or certificate of occupancy, the applicant or developer for projects subject to this ordinance shall be required to:

(1) Pay \$2500 for an art fee; and

(2) Any party may contribute to the fund at amounts greater than those required by this section at their discretion.

Section 7. Certificates of occupancy.

No final approval, such as a final inspection or a certificate of occupancy, for any development project subject to this ordinance shall be granted or issued unless and until full compliance with the Town of Cutler Bay art in public places program is achieved in one or more of the following ways:

(a) Art fees have been paid.

(b) Financial security, in an amount equal to the acquisition and installation costs of an approved art work, in a form approved by the Town attorney has been posted the Town.

Section 8. Creation of art in public places fund.

There is hereby created within the Town of Cutler Bay a special banking account to be known as the Town of Cutler Bay Art in Public Places Fund. This fund shall be maintained by the Town and shall be used solely for the acquisition, installation, improvement, maintenance and insurance of art work as follows:

(a) All money received by the Town pursuant under the Art in Public Places Program or from endowments or gifts to the Town of Cutler Bay

designated for the arts shall be placed in the art in public places fund. All money shall be deposited, invested, accounted for and expended as follows:

(1) Funds received shall be deposited in the art in public places fund in a manner to avoid any commingling with other revenues and funds of the Town of Cutler Bay, except for temporary investments, and all funds shall be expended solely for the purposes for which they were collected. Any interest income earned by the money in the art in public places fund shall be deposited in the art in public places fund and shall be expended only for the purpose for which the money was originally collected.

(2) The public art fund shall be used solely for expenses associated with the selection, commissioning, acquisition, transportation, maintenance, public education, promotion, administration, removal and insurance of the works of art or in relation thereto.

Section 9. Ownership and maintenance of art work placed on the site of a project.

(a) All art work placed on the site of a development project shall remain the property of the Town. The obligation to provide all maintenance necessary to preserve and maintain the art work in good condition shall remain with the owner of that site and the owner's successors and assigns, unless an agreement with the Town is reached and recorded.

(b) The obligation to maintain the art work shall be enforced as follows:

(1) Prior to the placement of the art work on a development project, the property owner shall record a document with the county recorder setting forth a description of the art work and acknowledging the obligation of the property owner to repair and maintain it. This document and the underlying covenant shall run with the land and provide notice to future property owners of the obligation to repair and maintain the art work and of certain limitations related to any federal, state or local laws governing the rights of the artists including but not limited to rights regarding the alteration, modification or relocation of subject art work. The Town shall be a signatory party to this document, and its final form and content shall be approved by the Town attorney.

(2) Maintenance of art work, as used in this ordinance, shall include, without limitation, preserving the art work in good condition to the satisfaction of the Town, protecting the art work against physical defacement, mutilation or alteration, and securing and maintaining insurance coverage for fire, wind, vandalism and extended liability in an amount to be determined by the Town attorney.

(3) At any time the Town Council determines that art work has not been maintained in substantial conformity with the manner in which it was originally approved, the code compliance division of the Town of Cutler Bay, as authorized by the Town Council, shall require the current property owner to either:

(i) Repair or maintain the art work; or

(ii) After reasonable notice, pay the lesser of either the costs estimated by the Town to be required to repair and maintain the art work and/or secure and maintain insurance for the art work, or the percent for the art fee required under this ordinance, based upon the current fee schedule and the current fair market value of the building, structure or improvement for which the art work was required, as determined by the county tax assessor.

(c) Stolen or removed art works are to be replaced by the owner. Replaced pieces are to be reviewed and approved by the Town Council.

(d) All art work donated to the Town shall become the property of the Town upon acceptance by the Town Council.

Section 10. Return of fees.

(a) Fees paid into the art in public places fund that are not committed within ten (10) years from the date of payment may be returned to the current owner of the development project with all interest actually earned thereon if a written request for return is filed with the Town treasurer during the tenth year after payment and refund of the fees is approved by the Town Council. The request for return shall be verified and shall include the date of payment, the amount paid and method of payment, the location of the development for which the fee was paid, and a statement that the applicant is the payer of the fees and/or the current owner of the development project.

(b) The Town Council shall determine if return of the then uncommitted portion of the fees and interest is appropriate and, if so, the method of refund. No refund shall be appropriate if the Town Council determines any one of the following applies:

(1) The Town Council finds the fee is needed for the art in public places program.

(2) Moneys were not posted as fees, but were satisfied by letter of credit, bond or other instrument taken to secure payment at a future date.

Section 11. Application procedures for placement of art work on private property but with “public space;” and all donations of art work to the Town of Cutler Bay.

An application for placement of art work on private property but within “public space” or for the donation of art work to the Town (as a gift), shall be submitted to the Town Council, after review and recommendation by the Board, and shall include:

(a) Preliminary sketches, photographs or other documentation of sufficient descriptive clarity to indicate the nature of the proposed art work;

(b) An appraisal or other evidence of the value of the proposed art work including acquisition and installation costs (To establish the value of art submitted, the Town may employ an independent art appraiser to provide a written appraisal of the art. Such appraisal shall either be funded from the Art in Public Places fund or by the developer as part of the overall art contribution);

(c) Preliminary plans containing such detailed information as may be required by the Town to adequately evaluate the location of the art work and its compatibility with the proposed development project and/or with the character of adjacent developed parcels and the existing neighborhood;

(d) A written agreement executed by the artist who created the art work, in which he or she expressly waives all rights that may be waived under applicable state and federal laws. The artist of approved artwork shall grant to the Town an unlimited, perpetual, non-exclusive, royalty-free, irrevocable license to reproduce and distribute two-dimensional reproductions of the artwork for Town-related purposes, and grant to the Town the exclusive irrevocable ownership rights in any trademark, service mark, or trade dress rights regarding the artwork, pursuant to a license that shall be approved by the Town attorney. Town approval of the artwork shall be deemed to be a grant of the artist for authorization by third parties to review and reproduce documents provided by the artist to the Town which are deemed to be public records pursuant to the public records laws of the state. The Town shall also have the option of referring to the name and title of the artist and artwork in reproductions;

(e) When art work is to be placed on private property, a written statement executed by the property owner and approved by the Town attorney that requires the landowner or his or her successors and assigns to defend, indemnify and hold the Town harmless against any liability, loss, damage, costs or expenses (including reasonable attorneys’ fees and court costs) arising from any claim, action or liability related to the art work;

(f) A narrative statement to be submitted to the Town to demonstrate that the art work will be displayed in a public place; and

(g) A statement indicating the property owner's willingness to maintain the art work in compliance with section 9 of this ordinance.

(h) Ownership and Upkeep. Ownership of all works of art acquired by the Town under this program is vested in the Town of Cutler Bay. The Board and the Town Council are charged with the custody, supervision, maintenance and preservation of such works of art. In each instance, the Town shall acquire title to each work of art acquired.

Section 3. Conflicts. All ordinances or Code provisions in conflict herewith are hereby repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in the Code. It is the intention of the Town Commission, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this ____, day of ____, 2008.

PASSED and ADOPTED on second reading this ____ day of ____, 2008.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman	_____
Vice Mayor Edward P. MacDougall	_____
Councilmember Peggy R. Bell	_____
Councilmember Timothy J. Meerbott	_____
Councilmember Ernest N. Sochin	_____